HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.2153 of 2005
Date of decision : 30.01.2007

Gurdial Singh and others **.....Appellants**

versus

Paramjit Singh **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Pankaj Jain, Advocate for the appellants.
Mr.Sandeep Bansal, Advocate for the respondent.

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ORDER

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby suit for permanent injunction in respect of the land in dispute was decreed.

It has been found that the defendants have become co-shares with the plaintiff after execution of the sale deed Exhibit D-1, in respect of the land measuring 1 kanal-8 marlas, executed by other co-sharer Surakshit Singh, brother of the plaintiff. It has been further found that the vendor of the defendants was not in exclusive actual possession of the suit land which could be delivered to the defendants. Thus, the defendants were restrained from interfering in the use and enjoyment of possession of the plaintiff in respect of the land measuring 47 kanal-12 marlas, over which the plaintiff is recorded in possession as per the jamabandies, Exhibit P-1 & P-2. It was also found that the remedy of the defendants is to seek partition of the land on the basis of the sale deed in their favour.

The said finding recorded by the learned First Appellate Court cannot be said to be suffering from any illegality or irregularity. It could not be pointed out that any evidence has been misread or not taken into consideration while returning the said finding. In the absence of proof of actual physical possession of the vendor of the defendants, the defendants cannot claim to be in actual physical possession of the suit land on the basis of a sale deed. Such findings are sought to be disputed by re-appreciation of evidence in second appeal.

I do not find any illegality or irregularity in the findings recorded by the learned First Appellate Court, which may give rise to any substantial question of law in second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

January 30, 2007
**mohinder*